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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,096	08/01/2003	Juergen-Michael Weick	15540-009001 / 18.00224 /	1914
26161	7590	04/11/2005	EXAMINER	
FISH & RICHARDSON PC			HEINRICH, SAMUEL M	
225 FRANKLIN ST			ART UNIT	
BOSTON, MA 02110			PAPER NUMBER	
			1725	

DATE MAILED: 04/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/632,096

Applicant(s)

WEICK ET AL.

Examiner

Samuel M. Heinrich

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2005.  
2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.  
4a) Of the above claim(s) 16 and 17 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-15 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 01 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 01132004.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

Claims 16 and 17 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed February 10, 2005.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by USPN 4,943,161 to Michaelis et al. Michaelis et al describe a laser processing machine and describe (column 4, lines 53-65) features comprising a beam splitter and a sensitive microphone. With respect to claim 2, Michaelis et al describe (column 4, lines 4-28) a variety of lasers which can be used, including well known gas lasers. With respect to claim 11, Michaelis et al disclose a measuring chamber 14. With respect to claim 7, Michaelis et al describe (column 4, lines 55-56) well known mechanical splitter means.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 3-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Michaelis et al. With respect to claims 3-6, Michaelis et al describe beam splitter 18. The use of the particularly claimed diffracting and reflecting laser machine elements would have been obvious at the time applicant's invention was made to a person having ordinary skill in the art because the diffracting and reflecting machine elements are commonly described as representing laser beam splitters. With respect to claim 8, Michaelis et al describe a chopper, but do not describe an electronic means for generating pulses. The use of electronic means in place of the mechanical splitter described by Michaelis et al would have been obvious at the time applicant's invention was made to a person having ordinary skill in the art because the electronic means is adjustable without disassembly and is well known in the laser art.

Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Michaelis et al as applied to claim 1 above, and further in view of USPN 5,811,753 to Weick et al. Weick et al describe (column 4, lines 34-52) the use of a rinsing gas for

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cleaning the sieve and the use thereof in the Michaelis et al apparatus would have been obvious at the time applicant's invention was made to a person having ordinary skill in the art because the rinse is a maintenance feature applicable to the measuring cell.

Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,811,753 to Weicke et al in view of Michaelis et al. Weicke et al describe the laser machine tool with a gas cell, but do not describe the measuring and detecting features of the cell. Michaelis et al describe (column 4, lines 40-68) the use of a measuring chamber and a microphone for controlling the operation thereof. The use of a measuring cell with a microphone in the Weicke et al apparatus would have been obvious at the time applicant's invention was made to a person having ordinary skill in the art because because the measuring chamber and microphone provide rapid adjustment for cell or chamber operation. Weick et al describe (column 4, lines 34-52) the use of a rinsing gas for cleaning the sieve.

With respect to claims 3-6, Michaelis et al describe beam splitter 18. The use of the particularly claimed diffracting and reflecting laser machine elements would have been obvious at the time applicant's invention was made to a person having ordinary skill in the art because the diffracting and reflecting machine elements are commonly described as representing laser beam splitters.

With respect to claim 7, Michaelis et al describe (column 4, lines 55-56) well known mechanical splitter means. With respect to claim 8, Michaelis et al describe a chopper, but do not describe an electronic means for generating pulses. The use of electronic means in place of the mechanical splitter described by Michaelis et al would

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have been obvious at the time applicant's invention was made to a person having ordinary skill in the art because the electronic means is adjustable without disassembly and is well known in the laser art.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited art pertains to laser apparatus and measuring apparatus. Any inquiry concerning this communication from the examiner should be directed to Samuel M. Heinrich whose telephone number is 703 308 1168.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas G. Dunn can be reached on 703 308 3318. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SMH

*Samuel M. Heinrich* April 5, 2005  
Samuel M Heinrich  
Primary Examiner  
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